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2011

# Stephanie Reynolds v. James H. Woodall, Citibank Federal Savings Bank, Corlene Kemker Trust, Mortgage Electronic Registration Systems, Inc., U.S. Bank, N.A., E-Title Insurance Agency, and John Does of Unkown Number : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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STEPHANIE REYNOLDS,

Plaintiff/Appellant,

vs.

JAMES H. WOODALL, CITIBANK  
FEDERAL SAVINGS BANK,  
CORLENE KEMKER TRUST,  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., U.S.  
BANK, N.A., E-TITLE INSURANCE  
AGENCY, AND JOHN DOES OF  
UNKNOWN NUMBER,

Defendants/Appellees.

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No. 20110129-CA

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BRIEF OF APPELLEE CORLENE KEMKER TRUST

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On Appeal from the Third Judicial District Court, Salt Lake County  
Case No. 090919624, Honorable Tyrone E. Medley

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FILED  
UTAH APPELLATE COURTS

AUG 15 2011

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**IN THE UTAH COURT OF APPEALS**

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STEPHANIE REYNOLDS,

Plaintiff/Appellant,

vs.

JAMES H. WOODALL, CITIBANK  
FEDERAL SAVINGS BANK,  
CORLENE KEMKER TRUST,  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., U.S.  
BANK, N.A., E-TITLE INSURANCE  
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**BRIEF OF APPELLEE CORLENE KEMKER TRUST**

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On Appeal from the Third Judicial District Court, Salt Lake County  
Case No. 090919624, Honorable Tyrone E. Medley

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**ORAL ARGUMENT NOT NECESSARY  
AS TO APPELLEE CORLENE KEMKER TRUST**

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## **PARTIES IN THE COURT BELOW**

The caption lists all parties to the proceedings below.

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## **JURISDICTION**

This Court lacks jurisdiction over this matter because there is no final judgment in the District Court. See infra, Section I. This Court has jurisdiction over appeals from final District Court judgments, pursuant to UTAH CODE ANN. §§ 78A-3-102(4) and 78A-4-103(2)(j).

## **ISSUES PRESENTED**

The appellant does not challenge the District Court's granting of summary judgment in favor of the Corlene Kemker Trust ("Kemker"), dismissing the appellant's complaint as against Kemker, and quieting title to the subject property in Kemker as sole owner in fee simple. The judgment below should thus be affirmed as to Kemker.

## **STANDARD OF REVIEW**

To the extent any review of the District Court's granting of summary judgment in favor of Kemker is appropriate, this Court reviews for correctness a ruling on summary judgment, which is appropriately granted when no material facts are in dispute and the governing law is properly applied. Holmes Dev. LLC v. Cook, 2002 UT 38, ¶ 21, 48 P.3d 895.

## **STATEMENT OF THE CASE**

Kemker does not dispute the summary of proceedings as set forth in the appellant's opening brief. However, in addition to that summary of proceedings, Kemker notes specifically that the District Court entered judgment in favor of Kemker, dismissing the appellant's complaint as against Kemker, and quieting title in Kemker as sole owner in fee simple, on May 11, 2010. (R. 446–49.) The District Court's ruling was based in



part on its conclusion “that Kemker is a bona fide purchaser for value.” (R. 447.) The appellant does not challenge the District Court’s ruling in favor of Kemker and it should therefore be affirmed.

## ARGUMENT

### **I. NO FINAL ORDER HAS BEEN ENTERED BY THE DISTRICT COURT AS TO ALL CLAIMS AND ALL PARTIES.**

The District Court’s dismissal of Appellee Citibank Federal Savings Bank, on January 7, 2011, was done without prejudice. (R. 599–603.) “Generally, a dismissal without prejudice is not considered to be a final, appealable order.” Hales v. Oldroyd, 2000 UT App 75, P1 n.2, 999 P.2d 588. “The final judgment rule, which underlies what is now Utah Rule of Appellate Procedure 3, precludes a party from taking an appeal from any orders or judgments that are not final.” A.J. Mackay Co. v. Okland Constr. Co., 817 P.2d 323, 325 (Utah 1991). “Where an appeal is not properly taken, [we] lack jurisdiction and we must dismiss.” Bradbury v. Valencia, 2000 UT 50, P8, 5 P.3d 649. Thus, the Court should entertain the present appeal only if it is determined that “the effect” of the dismissal without prejudice was “to finally resolve the issues.” Bowles v. State, 652 P.2d 1345, 1346 (Utah 1982) (per curiam).

### **II. ANY CHALLENGE TO THE DISTRICT COURT’S RULING IN FAVOR OF KEMKER HAS BEEN WAIVED AND ABANDONED.**

By failing to raise, brief, or argue the issue in her appeal, the appellant has waived and abandoned any challenge to the District Court’s ruling in favor of Kemker. Pasquin v. Pasquin, 1999 UT App 245, ¶ 21, 988 P.2d 1 (quoting American Towers Ass’n v. CCI Mechanical, Inc., 930 P.2d 1182, 1185 n.5 (Utah 1996) (“Issues not briefed by an

appellant are deemed waived and abandoned.”)). The order and judgment in favor of Kemker, entered May 11, 2010, should therefore be left undisturbed.

**III. KEMKER JOINS IN THE BRIEFING AND ARGUMENTS OF ITS CO-DEFENDANTS WITH RESPECT TO THE RATIFICATION AND CONFIRMATION OF PRIOR ACTS.**

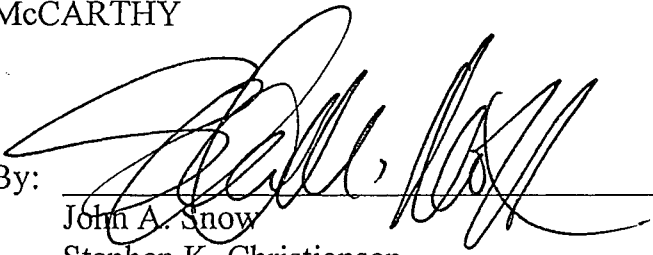
As with Appellee U.S. Bank, to the extent deemed necessary or helpful by the Court, Kemker respectfully joins in the briefing and arguments of its Co-Defendants, most particularly the arguments of Appellee James H. Woodall, as they pertain to the ratification and confirmation of prior acts of a substitute trustee, pursuant to and in accordance with the statutory scheme set forth in UTAH CODE ANN. § 57-1-22.

**CONCLUSION**

For the foregoing reasons, independently and collectively, this Court should affirm the District Court’s judgment in favor of Kemker.

DATED this 15th day of August, 2011.

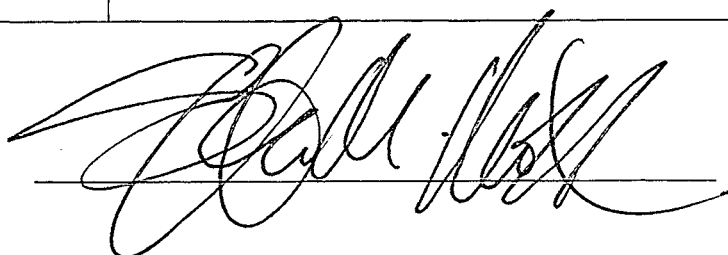
VAN COTT, BAGLEY, CORNWALL &  
McCARTHY

By:   
\_\_\_\_\_  
John A. Snow  
Stephen K. Christiansen  
Seth M. Mott  
*Attorneys for Appellee Corlene Kemker Trust*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused two (2) true and correct copies of the within and foregoing **BRIEF OF APPELLEE CORLENE KEMKER TRUST** to be mailed, postage prepaid, this 15th day of August, 2011, to the following counsel of record:

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